

AMENDED IN SENATE AUGUST 15, 2011

AMENDED IN ASSEMBLY MAY 27, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 410**

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**Introduced by Assembly Member Swanson  
(Coauthor: Assembly Member Ma)**

February 14, 2011

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An act to amend Section 11346.5 of, and to add Section 11346.6 to, the Government Code, relating to regulations.

### LEGISLATIVE COUNSEL'S DIGEST

AB 410, as amended, Swanson. Regulations: adoption: disability access.

Existing state and federal law prohibits the exclusion of a qualified individual with a disability, by reason of that disability, from participation in or equal access to the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by a public entity. Federal regulations require a public entity to take appropriate steps to ensure that communications with participants and members of the public with disabilities are as effective as communications with others. These regulations also require a public entity to furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.

Existing law, the Administrative Procedure Act, governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of

Administrative Law. Existing law requires an agency to publish a notice of proposed action that includes specified information, at least 45 days prior to a hearing and the close of the public comment period.

This bill would require an agency that ~~adopts~~ *proposes* certain regulations, upon a request from a person with a visual disability or other disability for which effective communication is required under state or federal law, to provide that person a narrative description of the proposed regulation, as prescribed, and would provide for an extended public comment period for that person. The bill would also require an agency to include within the notice of proposed action a specified statement regarding the availability of narrative descriptions for persons with visual or other specified disabilities. The bill would require an agency that adopts a regulation that is subject to the requirements of the bill to submit a report to the Governor and certain committees of the Legislature on or before February 1, 2014, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. (a) The Legislature finds and declares all of the  
2 following:

3 (1) Pursuant to the requirements of Title II of the Americans  
4 with Disabilities Act of 1990 (42 U.S.C. Sec. 12131 et seq.) and  
5 Section 11135 of the Government Code, persons with disabilities  
6 are guaranteed timely, effective communication of written  
7 documents that allows independent access to these documents.

8 (2) The manner in which proposed regulations of a state agency  
9 are transmitted to the public does not allow for this timely, effective  
10 communication of the content of the proposed regulations to  
11 persons with visual or other disabilities.

12 (b) It is the intent of the Legislature in enacting this act to  
13 provide a mechanism for compliance with state and federal  
14 effective communication requirements with respect to the adoption  
15 of proposed regulations by state agencies.

16 SEC. 2. Section 11346.5 of the Government Code is amended  
17 to read:

18 11346.5. (a) The notice of proposed adoption, amendment, or  
19 repeal of a regulation shall include the following:

1 (1) A statement of the time, place, and nature of proceedings  
2 for adoption, amendment, or repeal of the regulation.

3 (2) Reference to the authority under which the regulation is  
4 proposed and a reference to the particular code sections or other  
5 provisions of law that are being implemented, interpreted, or made  
6 specific.

7 (3) An informative digest drafted in plain English in a format  
8 similar to the Legislative Counsel's digest on legislative bills. The  
9 informative digest shall include the following:

10 (A) A concise and clear summary of existing laws and  
11 regulations, if any, related directly to the proposed action and of  
12 the effect of the proposed action.

13 (B) If the proposed action differs substantially from an existing  
14 comparable federal regulation or statute, a brief description of the  
15 significant differences and the full citation of the federal regulations  
16 or statutes.

17 (C) A policy statement overview explaining the broad objectives  
18 of the regulation and, if appropriate, the specific objectives.

19 (4) Any other matters as are prescribed by statute applicable to  
20 the specific state agency or to any specific regulation or class of  
21 regulations.

22 (5) A determination as to whether the regulation imposes a  
23 mandate on local agencies or school districts and, if so, whether  
24 the mandate requires state reimbursement pursuant to Part 7  
25 (commencing with Section 17500) of Division 4.

26 (6) An estimate, prepared in accordance with instructions  
27 adopted by the Department of Finance, of the cost or savings to  
28 any state agency, the cost to any local agency or school district  
29 that is required to be reimbursed under Part 7 (commencing with  
30 Section 17500) of Division 4, other nondiscretionary cost or  
31 savings imposed on local agencies, and the cost or savings in  
32 federal funding to the state.

33 For purposes of this paragraph, "cost or savings" means  
34 additional costs or savings, both direct and indirect, that a public  
35 agency necessarily incurs in reasonable compliance with  
36 regulations.

37 (7) If a state agency, in proposing to adopt, amend, or repeal  
38 any administrative regulation, makes an initial determination that  
39 the action may have a significant, statewide adverse economic  
40 impact directly affecting business, including the ability of

1 California businesses to compete with businesses in other states,  
2 it shall include the following information in the notice of proposed  
3 action:

4 (A) Identification of the types of businesses that would be  
5 affected.

6 (B) A description of the projected reporting, recordkeeping, and  
7 other compliance requirements that would result from the proposed  
8 action.

9 (C) The following statement: “The (name of agency) has made  
10 an initial determination that the (adoption/amendment/repeal) of  
11 this regulation may have a significant, statewide adverse economic  
12 impact directly affecting business, including the ability of  
13 California businesses to compete with businesses in other states.  
14 The (name of agency) (has/has not) considered proposed  
15 alternatives that would lessen any adverse economic impact on  
16 business and invites you to submit proposals. Submissions may  
17 include the following considerations:

18 (i) The establishment of differing compliance or reporting  
19 requirements or timetables that take into account the resources  
20 available to businesses.

21 (ii) Consolidation or simplification of compliance and reporting  
22 requirements for businesses.

23 (iii) The use of performance standards rather than prescriptive  
24 standards.

25 (iv) Exemption or partial exemption from the regulatory  
26 requirements for businesses.”

27 (8) If a state agency, in adopting, amending, or repealing any  
28 administrative regulation, makes an initial determination that the  
29 action will not have a significant, statewide adverse economic  
30 impact directly affecting business, including the ability of  
31 California businesses to compete with businesses in other states,  
32 it shall make a declaration to that effect in the notice of proposed  
33 action. In making this declaration, the agency shall provide in the  
34 record facts, evidence, documents, testimony, or other evidence  
35 upon which the agency relies to support its initial determination.

36 An agency’s initial determination and declaration that a proposed  
37 adoption, amendment, or repeal of a regulation may have or will  
38 not have a significant, adverse impact on businesses, including the  
39 ability of California businesses to compete with businesses in other

1 states, shall not be grounds for the office to refuse to publish the  
2 notice of proposed action.

3 (9) A description of all cost impacts, known to the agency at  
4 the time the notice of proposed action is submitted to the office,  
5 that a representative private person or business would necessarily  
6 incur in reasonable compliance with the proposed action.

7 If no cost impacts are known to the agency, it shall state the  
8 following:

9 “The agency is not aware of any cost impacts that a  
10 representative private person or business would necessarily incur  
11 in reasonable compliance with the proposed action.”

12 (10) A statement of the results of the assessment required by  
13 subdivision (b) of Section 11346.3.

14 (11) The finding prescribed by subdivision (c) of Section  
15 11346.3, if required.

16 (12) A statement that the action would have a significant effect  
17 on housing costs, if a state agency, in adopting, amending, or  
18 repealing any administrative regulation, makes an initial  
19 determination that the action would have that effect. In addition,  
20 the agency officer designated in paragraph (14) shall make  
21 available to the public, upon request, the agency’s evaluation, if  
22 any, of the effect of the proposed regulatory action on housing  
23 costs.

24 (13) A statement that the adopting agency must determine that  
25 no reasonable alternative considered by the agency or that has  
26 otherwise been identified and brought to the attention of the agency  
27 would be more effective in carrying out the purpose for which the  
28 action is proposed or would be as effective and less burdensome  
29 to affected private persons than the proposed action.

30 (14) The name and telephone number of the agency  
31 representative and designated backup contact person to whom  
32 inquiries concerning the proposed administrative action may be  
33 directed.

34 (15) The date by which comments submitted in writing must  
35 be received to present statements, arguments, or contentions in  
36 writing relating to the proposed action in order for them to be  
37 considered by the state agency before it adopts, amends, or repeals  
38 a regulation.

39 (16) Reference to the fact that the agency proposing the action  
40 has prepared a statement of the reasons for the proposed action,

1 has available all the information upon which its proposal is based,  
2 and has available the express terms of the proposed action, pursuant  
3 to subdivision (b).

4 (17) A statement that if a public hearing is not scheduled, any  
5 interested person or his or her duly authorized representative may  
6 request, no later than 15 days prior to the close of the written  
7 comment period, a public hearing pursuant to Section 11346.8.

8 (18) A statement indicating that the full text of a regulation  
9 changed pursuant to Section 11346.8 will be available for at least  
10 15 days prior to the date on which the agency adopts, amends, or  
11 repeals the resulting regulation.

12 (19) A statement explaining how to obtain a copy of the final  
13 statement of reasons once it has been prepared pursuant to  
14 subdivision (a) of Section 11346.9.

15 (20) If the agency maintains an Internet Web site or other similar  
16 forum for the electronic publication or distribution of written  
17 material, a statement explaining how materials published or  
18 distributed through that forum can be accessed.

19 (21) A statement that the agency shall provide, upon request, a  
20 description of the proposed changes included in the proposed  
21 action, in the manner provided by Section 11346.6, to  
22 accommodate a person with a visual or other disability for which  
23 effective communication is required under state or federal law and  
24 that providing the description of proposed changes may require  
25 extending the period of public comment for the proposed action.

26 (b) The agency representative designated in paragraph (14) of  
27 subdivision (a) shall make available to the public upon request the  
28 express terms of the proposed action. The representative shall also  
29 make available to the public upon request the location of public  
30 records, including reports, documentation, and other materials,  
31 related to the proposed action. If the representative receives an  
32 inquiry regarding the proposed action that the representative cannot  
33 answer, the representative shall refer the inquiry to another person  
34 in the agency for a prompt response.

35 (c) This section shall not be construed in any manner that results  
36 in the invalidation of a regulation because of the alleged inadequacy  
37 of the notice content or the summary or cost estimates, or the  
38 alleged inadequacy or inaccuracy of the housing cost estimates, if  
39 there has been substantial compliance with those requirements.

1 SEC. 3. Section 11346.6 is added to the Government Code, to  
2 read:

3 11346.6. (a) This section shall only apply to the following  
4 proposed regulations:

5 (1) Regulations—~~adopted~~ *proposed* by the Department of  
6 Rehabilitation.

7 (2) Regulations that must be submitted to the California Building  
8 Standards Commission that pertain to disability access compliance,  
9 including, but not limited to, regulations—~~adopted~~ *proposed* by the  
10 State Fire Marshal, the Department of Housing and Community  
11 Development, the Division of the State Architect, and the  
12 California Commission on Disability Access.

13 (3) Regulations—~~adopted~~ *proposed* by the State Department of  
14 Education that pertain to special education.

15 (4) Regulations that pertain to the Medi-Cal program.

16 (b) Upon request from a person with a visual disability or other  
17 disability for which effective communication is required under  
18 state or federal law, the agency shall provide that person a narrative  
19 description of the additions to, and deletions from, the California  
20 Code of Regulations or other publication. The description shall  
21 identify each addition to or deletion from the California Code of  
22 Regulations by reference to the subdivision, paragraph,  
23 subparagraph, clause, or subclause within the proposed regulation  
24 containing the addition or deletion. The description shall provide  
25 the express language proposed to be added to or deleted from the  
26 California Code of Regulations or other publication and any portion  
27 of the surrounding language necessary to understand the change  
28 in a manner that allows for accurate translation by reading software  
29 used by the visually impaired.

30 (c) The agency shall provide the information described in  
31 subdivision (b) within 10 business days, unless the agency  
32 determines that compliance with this requirement would be  
33 impractical and notifies the requester of the date on which the  
34 information will be provided.

35 (d) Notwithstanding any other law, if information is provided  
36 to a requester pursuant to this section, the agency shall provide  
37 that requester at least 45 days from the date upon which the  
38 information was provided to the requester to submit a public  
39 comment regarding the proposed regulation. The agency shall not  
40 take final action to adopt the regulation until the requester has

1 submitted a public comment or the extended 45-day comment  
2 period expires, whichever occurs first.

3 (e) (1) Not later than February 1, 2014, an agency that adopted  
4 a proposed regulation subject to the requirements of this section  
5 shall submit a report, for both the 2012 and 2013 calendar years,  
6 to the Governor, the fiscal committee in each house of the  
7 Legislature, and the appropriate policy committee in each house  
8 of the Legislature, that specifies the number of requests submitted  
9 for a narrative description of a proposed regulation, and the number  
10 of narrative descriptions actually provided pursuant to this section.

11 (2) The report shall be submitted to the Legislature in the manner  
12 required pursuant to Section 9795.

13 (3) The reporting requirement imposed by this subdivision shall  
14 become inoperative on February 1, 2018, as required pursuant to  
15 Section 10231.5.

16 (4) It is the intent of the Legislature to evaluate the reports  
17 submitted pursuant to this subdivision to determine whether the  
18 requirements of this section should be applied to all regulations  
19 adopted by all agencies.

20 SEC. 4. Nothing in this act shall be construed to limit the duty  
21 of a state agency to meet its obligations pursuant to Title II of the  
22 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12131  
23 et seq.) or Section 11135 of the Government Code to take  
24 appropriate steps to ensure that communications with participants  
25 and members of the public with disabilities are as effective as  
26 communications with others.